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4-24-2012

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Automated Citation

Pratheepan Gulasekaram and Karthick Ramakrishnan, *The Anti-Immigrant Game* (2012),

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Op-Ed

The anti-immigrant game

Laws such as Arizona's SB 1070 are not natural responses to undue hardship but are products of partisan politics.

April 24, 2012 | By Pratheepan Gulasekaram and Karthick Ramakrishnan

The Supreme Court hears oral arguments Wednesday on the constitutionality of Arizona's 2010 immigration enforcement law. If upheld, SB 1070 would require local police in most circumstances to determine the immigration status of anyone they stop based only on a reasonable suspicion that the person is unlawfully in this country. It would also compel residents to carry their immigration papers at all times and create state immigration crimes distinct from what is covered by federal law. A few other states, such as Alabama and Georgia, and some cities have passed similar laws, and many more may consider such laws if the Supreme Court finds Arizona's law to be constitutional.

The primary legal debate in U.S. vs. Arizona will focus on the issue of whether a state government can engage in immigration enforcement without the explicit consent of the federal government. The state of Arizona will argue that its measure simply complements federal enforcement, while the federal government will argue that Arizona's law undermines national authority and that immigration enforcement is an exclusively federal responsibility.

Missing from this important legal debate, however, is the larger question of why states and localities are getting involved in immigration enforcement in the first place. The conventional wisdom on these policies is that federal inaction, combined with demographic pressures from immigration, have left these states and cities little choice but to act. According to this logic, new immigrants, especially illegal immigrants, are causing cultural and economic upheavals in places unaccustomed to such transformations. Consequently, laws like Arizona's SB 1070 and Alabama's HB 56 are seen as natural and inevitable responses.

These reasons, however, do not stand up to empirical investigation. In our new systematic study of these state and local immigration laws, the data show that commonly assumed factors — e.g., the growth of immigrant populations, immigrant-caused economic stress, prevalence of Spanish speakers and overcrowded housing — make no significant difference in the proposal or passage of these restrictive immigration laws.

By contrast, political partisanship consistently predicts when and where states and localities will introduce restrictive immigration laws, with Republican-heavy areas especially likely to do so. For instance, restrictive ordinances are 93% more likely to pass in Republican counties than in Democratic ones. At the state level, there is a 47% difference between Republican-heavy states and Democrat-heavy states.

Restrictionist and anti-illegal immigrant activist groups, such as NumbersUSA, the Federation for American Immigration Reform and rising stars in the Republican Party, such as Kansas Secretary of State Kris Kobach, choose venues for immigration enforcement schemes that are politically receptive to immigration restriction. These places — like Valley Park, Mo., and the state of Alabama — are not necessarily areas that have experienced the greatest increases in immigration or immigrant-induced social and economic problems. However, these jurisdictions are mostly Republican, where sympathetic elected officials can fast-track restrictive bills and where primary voters can be counted on to push for legislative action on immigration.

Undoubtedly, Arizona is heavily Republican and has experienced great increases in immigration. However, other border states with even greater increases in their illegal immigrant populations, such as New Mexico and Texas, have not passed similar laws. Furthermore, our larger systematic analysis of 25,000 municipalities and all 50 states found that partisanship-based explanations more accurately account for these laws, including Arizona's.

Meanwhile, states and localities with much higher proportions and populations of legal and illegal immigrants have either taken no action on immigration or have passed laws helping to integrate and accommodate their immigrant populations. For example, California and Illinois allow students here unlawfully to pay in-state tuition at public universities, and have barred the state, its counties and its cities from requiring employers to participate in E-Verify, an electronic federal employment verification system.

Why are our findings consequential for what is happening in Arizona and elsewhere? Our political model shows these laws should not be understood as natural and inevitable responses to the new geography of immigration. These state and local laws do not arise out of economic or social necessity.

Instead, they are mostly, if not always, pre-designed "solutions" in search of immigration "problems." Indeed, the same individual — Kansas' Kobach — has helped design some of the bills, which were presented as model legislation to places where they were likely to be passed. These have proved appealing in states such as Alabama and Mississippi, which have relatively low immigrant populations and where immigration does not pose a significant public policy problem.

Consistent with the trial and appellate court decisions in the case, the Supreme Court will likely also rule that federal law preempts SB 1070. But such an outcome would not mean the end of state and local attempts to participate in immigration enforcement. Future public

and judicial evaluations of these laws should recognize them for what they are: political gamesmanship and not rational or useful public policy.

Pratheepan Gulasekaram is an assistant professor of law at Santa Clara University and Karthick Ramakrishnan is associate professor of political science at UC Riverside. They are completing a book on the rise of state and local immigration laws in the United States.

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